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HOUSE BILL 16

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ray Begaye

AN ACT

**RELATING TO PUBLIC EMPLOYEES RETIREMENT; CHANGING CONDITIONS
FOR THE RETURN TO EMPLOYMENT BY RETIRED MEMBERS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. **NORMAL RETIREMENT--RETURN TO EMPLOYMENT--**
[BENEFITS CONTINUED] EMPLOYER CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

- (1) a written application for normal retirement, in the form prescribed by the association, is filed

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1 with the association;

2 (2) employment is terminated with all
3 employers covered by any state system or the educational
4 retirement system;

5 (3) the member selects an effective date of
6 retirement that is the first day of a calendar month; and

7 (4) the member meets the age and service
8 credit requirement for normal retirement specified in the
9 coverage plan applicable to the member.

10 B. The amount of normal retirement pension is
11 determined in accordance with the coverage plan applicable to
12 the member.

13 [~~C. Except as provided in Subsection D or E of this~~
14 ~~section, a retired member may be subsequently employed by an~~
15 ~~affiliated public employer if the following conditions apply:~~

16 (1) ~~the member has not been employed as an~~
17 ~~employee of an affiliated public employer for at least ninety~~
18 ~~consecutive days from the date of retirement to the~~
19 ~~commencement of employment or re-employment with an affiliated~~
20 ~~public employer. If the retired member returns to employment~~
21 ~~without first completing ninety consecutive days of~~
22 ~~retirement:~~

23 (a) ~~the retired member's pension shall~~
24 ~~be suspended immediately and the previously retired member~~
25 ~~shall become a member; and~~

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1 ~~Subsection C of this section that require employee or employer~~
2 ~~contributions]~~ Subsections D and E of this section do not apply
3 to ~~[(1)]~~ a retired member who is appointed chief of police of
4 an affiliated public employer, other than the affiliated public
5 employer from which the retired member retired, or who is
6 appointed undersheriff; provided that:

7 ~~[(a)]~~ (1) the retired member files an
8 irrevocable exemption from membership with the association
9 within thirty days of appointment;

10 ~~[(b)]~~ (2) each sheriff's office shall be
11 limited to one undersheriff qualifying pursuant to this
12 paragraph;

13 ~~[(c)]~~ (3) the irrevocable exemption shall be
14 for the chief of police's or the undersheriff's term of office;
15 and

16 ~~[(d)]~~ (4) filing an irrevocable exemption
17 shall irrevocably bar the retired member from acquiring service
18 credit for the period of exemption from membership. [~~or~~

19 ~~(2) a retired member employed by the~~
20 ~~legislature for legislative session work~~

21 ~~E. At any time during a retired member's subsequent~~
22 ~~employment pursuant to Subsection C of this section, the~~
23 ~~retired member may elect to suspend the pension. When the~~
24 ~~pension is suspended, the following conditions shall apply]~~

25 D. On or after July 1, 2005, a retired member may

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1 be subsequently employed by an affiliated public employer
2 provided that the retired member's pension shall be suspended
3 the first day of the month in which the retired member's
4 earnings for a calendar year exceed fifteen thousand dollars
5 (\$15,000).

6 E. When a pension is suspended pursuant to
7 Subsection D of this section, the following conditions apply:

8 (1) the retired member who is subsequently
9 employed by an affiliated public employer shall become a
10 member. The previously retired member and the subsequent
11 affiliated public employer shall make the required employee and
12 employer contributions, and the previously retired member shall
13 accrue service credit for the period of subsequent employment;
14 and

15 (2) when a previously retired member
16 terminates the subsequent employment with an affiliated public
17 employer, [he] the previously retired member shall retire
18 according to the provisions of the Public Employees Retirement
19 Act, subject to the following conditions:

20 (a) payment of the pension shall resume
21 in accordance with the provisions of Subsection A of this
22 section;

23 (b) unless the previously retired member
24 accrued at least three years of service credit on account of
25 the subsequent employment, the recalculation of pension shall:

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1 1) employ the form of payment selected by the previously
2 retired member at the time of the first retirement; and 2) use
3 the provisions of the coverage plan applicable to the member on
4 the date of the first retirement; and

5 (c) the recalculated pension shall not
6 be less than the amount of the suspended pension.

7 F. The pension of a member who has three or more
8 years of service credit under each of two or more coverage
9 plans shall be determined in accordance with the coverage plan
10 that produces the highest pension. The pension of a member who
11 has service credit under two or more coverage plans but who has
12 three or more years of service credit under only one of those
13 coverage plans shall be determined in accordance with the
14 coverage plan in which the member has three or more years of
15 service credit. If the service credit is acquired under two
16 different coverage plans applied to the same affiliated public
17 employer as a consequence of an election by the members,
18 adoption by the affiliated public employer or a change in the
19 law that results in the application of a coverage plan with a
20 greater pension, the greater pension shall be paid a member
21 retiring from the affiliated public employer under which the
22 change in coverage plan took place regardless of the amount of
23 service credit under the coverage plan producing the greater
24 pension; provided the member has three or more years of
25 continuous employment with that affiliated public employer

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1 immediately preceding or immediately preceding and immediately
2 following the date the coverage plan changed. The provisions
3 of each coverage plan for the purpose of this subsection shall
4 be those in effect at the time the member ceased to be covered
5 by the coverage plan. "Service credit", for the purposes of
6 this subsection, shall be only personal service rendered an
7 affiliated public employer and credited to the member under the
8 provisions of Subsection A of Section 10-11-4 NMSA 1978.
9 Service credited under any other provision of the Public
10 Employees Retirement Act shall not be used to satisfy the
11 three-year service credit requirement of this subsection. "

12 Section 2. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2005.